

June 24, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notice of ex parte from the Gila River Telecommunications, Inc.
Connect America Fund, WC Docket No. 10-90*

Dear Ms. Dortch:

By this letter, and pursuant to Section 1.1206 of the Commission's rules,¹ Gila River Telecommunications, Inc. (GRTI) provides notice of a meeting on Wednesday, June 22nd with Carol Matthey, Suzanne Yelen, Alex Minard, Joe Sorresso, and Deborah Dupont of the Federal Communication Commission's (Commission) Wireline Competition Bureau. In attendance for GRTI were Chairperson Belinda Nelson, Vice Chairperson John Lewis, Board Member Lee Miguel, General Manager Bruce Holdridge, and Greg Guice, counsel for GRTI.

Consistent with comments filed in response to the Further Notice of Proposed Rulemaking (FNPRM),² GRTI reiterated that there are unique costs associated with providing broadband on tribal lands that are primarily realized as operating expenses and as a carrier that whose study area is comprised 100 percent of tribal locations, these unique costs substantially raise its expenses.³ GRTI noted that the \$1.26 million in expenses set out in its comments demonstrate that the magnitude of the challenge carriers serving tribal lands face. GRTI also noted that in its reply comments it provided cites to examples provided by other carriers demonstrating the unique challenges and costs associated with the tribal lands they serve.⁴ GRTI reaffirmed its support for a tribal-specific operating expense (opex) mechanism that either exempts or modifies the opex limits adopted in the Commission's underlying order and a capital investment mechanism, like the Tribal Broadband Factor, proposed by NTTA.⁵

In response to questions on the inclusion of middle mile from the staff, GRTI noted that its costs and other carriers serving tribal lands face higher costs for middle mile, a point illustrated by an example provided by Tohono O'odham Utility Authority in comments to the Commission and that GAO highlighted in its review of barriers to broadband access on tribal

¹ 47 C.F.R. § 1.1206.

² *In re Connect America Fund*, WC Docket Nos. 10-90, 14-58; CC Docket Nos. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087 (rel. Mar. 30, 2016) (*Rate of Return Reform Order*).

³ Comments of Gila River Telecommunications, Inc., Connect America Fund, WC Docket No. 10-90, filed May 12, 2016 at 7-9 (GRTI Comments). The categories of unique costs include middle mile, Bureau of Indian Affairs rights-of-way, National Environmental Protection Act, and others.

⁴ Reply Comments of Gila River Telecommunications, Inc., Connect America Fund, WC Docket No. 10-90, filed June 13, 2016 at 3-4 (GRTI Reply Comments).

⁵ GRTI Comments at 10-11; GRTI Reply Comments at 3-6.

lands.⁶ GRTI also noted that the model adopted as part of the Commission's recent rate-of-return reforms included an allowance for middle mile cost.⁷

In response to staff's questions regarding the FNPRM's proposal to exempt carriers serving tribal lands from the operating expense limitations, GRTI explained that the FCC and other federal entities have recognized for more than fifteen years that there are higher, unique costs associated with serving tribal lands. A methodology based on standard deviations, which is used to identify outliers, and includes carriers like GRTI only serves to validate that 15-year record.⁸ It is not dispositive of imprudent investment, waste fraud or abuse. GRTI further explained that a 1.5 standard deviation, which simply means slightly fewer than 90 percent of the carriers will lie within a band around the mean, is overly restrictive in considering support levels for carriers serving tribal lands. Consistent with its comments, GRTI urged the Commission to either exempt any carrier whose service area is substantially tribal lands (50 percent or greater) or raise the standard deviation for such carriers to 2.5.⁹

GRTI expressed its continuing support for the Tribal Broadband Factor (TBF) proposal that the Commission sought comment on and explained that capital and operating costs are involved in any project so both forms of tribal support are needed. GRTI noted that no one had filed in opposition to either of the proposals and that it would work with the Commission and others to ensure these changes could be adopted before the end of the year.

Finally, GRTI renewed its request for consideration of its waiver petition, which seeks relief from the effects of the Commission's adoption of the national average cost per loop (NACPL) freeze.¹⁰ In that Order, the Commission stated it was "not persuaded that even the highest cost rate-of-return carriers will be harmed by this rule."¹¹ As GRTI stated in its waiver petition, it is harmed by a reduction in support of \$655,000 annually.¹² GRTI noted that the Commission's standard for consideration of the waiver petition is governed by the *Fifth Order on Reconsideration* in which the Commission modified and clarified in several respects the waiver standard adopted in the 2011 universal service reforms.¹³ One clarification made by the Commission was to state that "to the extent carriers have already made the investment in

⁶ National Tribal Telecommunications Ass'n Comments at 12; U.S. Gen. Accountability Off., GAO-16-222, *Telecommunications: Additional Coordination and Performance Measurements Needed for High-Speed Internet Access Programs on Tribal Lands* at 1 (Feb. 3, 2016) (GAO Report) at 1.

⁷ *Rate of Return Reform Order*, 31 FCC Rcd. at 3105-3106, para. 46 ("To reflect the fact that rate-of-return carriers may have higher middle mile costs, A-CAM v2.0 added two connections from each regional access tandem ring to an Internet access point to account for the cost of connecting to the public Internet.").

⁸ GRTI provides a number of examples of these findings over the last fifteen years in its comments. GRTI Comments at 2-6.

⁹ GRTI Comments at 10-11.

¹⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd. 15644 (2014) (*2014 NACPL Freeze Order*).

¹¹ *Id.* at 15684, para. 112.

¹² GRTI Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Dockets Nos. 10-90, 14-58, 07-35, 14-192, filed Nov. 9, 2015 (*GRTI Waiver Petition*). The Commission adopted the NACPL freeze as part of its 2014 Connect America Fund Order. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd. 15644 (2014), 15684, para. 112 (2014) (*2014 NACPL Freeze Order*).

¹³ *Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 10-208, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208; Fifth Order on Reconsideration, 27 FCC Rcd. 14549, 14556, para. 19 (2012) (*Fifth Order on Reconsideration*).

broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no other alternatives would be a public policy concern.”¹⁴ The Commission went on to state that granting relief would be appropriate where “consumers in the relevant study areas would *not* be paying reasonably comparable rates to urban customers.”¹⁵ GRTI explained to the staff that in its petition it demonstrated that the reduction of support, \$655,000 annually, results in a loss of support of \$184 per loop annually.¹⁶ In order to cover those costs, GRTI would need to increase its consumer rates to \$50.00, which is above the Commission’s ceiling for reasonable rate of \$47.48.¹⁷

In response to staff questions on what relief GRTI is seeking and how that relief may be granted, particularly in light of the adjustment factor changing annually, GRTI responded that in its petition it requested that the Commission set the NECA pro rata adjustment factor, as it applies to GRTI, at a factor of 1, as opposed to the .899783 factor NECA has applied to GRTI.¹⁸ This would have the effect of returning GRTI’s HCLS support to pre-2014 decision levels. Regarding the difficulty staff cited in granting relief as a consequence of the fluctuation of the factor each year, GRTI suggested that the waiver could be granted for a period of five years, holding the factor static at 1 for those five years or adjusted annually by the Commission. GRTI noted that holding the factor static would be administratively easiest for the Commission but either could help provide GRTI time to make adjustments. As to funding, GRTI believes that the restoration of the \$3.2 million in support (\$655,000 x 5 years) would have a *de minimis* impact on the fund.

GRTI noted that the combination of the opex limitations adopted in the 2015 *Rate of Return Reform Order* and the NACPL freeze decision results in a loss of \$2 million in annual support, which is an approximate 21 percent reduction in support. GRTI explained that the combination of these two decisions cannot be addressed through further reductions in its expenses and would need to be passed on to its consumers, making rates unaffordable for many of the members of the Gila River Indian Community (GRIC).¹⁹ As GRTI has noted in other filings with the Commission, GRTI was founded more than 28 years ago to address the lack of communications service on the GRIC and to provide affordable access. It would be nearly impossible for GRTI to fulfill that mission with reductions in support at these levels.

GRTI reiterated its willingness to “open its books” under protective order to demonstrate to the Commission that it has been and continues to be a good steward of USF funds, making prudent investments to further not only connectivity to tribal members on the GRIC, but also in furtherance of the Commission’s mission regarding access to broadband for all Americans.

Please direct any questions to the undersigned.

¹⁴ *Fifth Order on Reconsideration* at 14557, para. 21.

¹⁵ *Id.*

¹⁶ *GRTI Waiver Petition* at 2.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 12.

¹⁹ Comments of Gila River Telecommunications, Inc., Lifeline and Link-Up Reform Modernization, WC Docket No. 11-42, filed Sept. 2, 2015.

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